

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO.	PDA07-089-02
LOCATION OF PROPERTY	Southeast corner of Southwest Expressway and Leigh Ave (1690 Southwest Expressway).
ZONING DISTRICT	A(PD) Planned Development Zoning District (File No. PDC07-083)
GENERAL PLAN DESIGNATION	Neighborhood Community/Commercial
PROPOSED USE	Planned Development Permit Amendment to allow construction to extend to Saturday's from 8:00 a.m. to 3:30 p.m. for a previously approved project (File No. PD07-089) on an approximately 0.97-gross acre site.
ENVIRONMENTAL STATUS	Addendum to the Mitigated Negative Declaration for the Leigh Avenue Apartments Project.
APPLICANT ADDRESS	First Community Housing 75 East Santa Clara Street, Suite 1300 San Jose, CA 95113
OWNER ADDRESS	Leigh Avenue Apartments LP 75 East Santa Clara Street, Suite 1300 San Jose, CA 95113

FACTS AND FINDINGS

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Project Description.** A Planned Development Permit Amendment to allow construction hours on Saturdays from 8:00 a.m. to 3:30 p.m. for a previously approved project (File No. PD07-089) on an approximately 0.97-gross acre site.
- 2. Site Description and Surrounding Uses.** The subject site is currently under construction for a previously approved permit (File No. PD07-089). The site is located at 1690 Southwest Expressway. The project is surrounded by residential to the north, west, and east, and commercial to the south.
- 3. General Plan Conformance.** The subject site has a Neighborhood/Commercial land use designation on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation supports a very broad range of commercial activity, including commercial uses that serve the communities in neighboring areas, such as neighborhood serving retail

and services and commercial/professional office development. The previously approved Planned Development Permit was approved in 2009 under a different land use designation. The project is currently under construction and conforms with the 2020 General Plan.

4. **Zoning Conformance.** The subject site is located in the A(PD) Planned Development Zoning District, File No. PDC07-083 (Ordinance No. 28458) which was approved on December 16, 2008 for up to 64 multi-family residential units for senior affordable housing and a 7,500 square-foot dental office.

Pursuant to Section 20.100.440 of the San Jose Municipal Code, construction hours within 500 feet of a residential unit other than 7:00 a.m. to 7:00 p.m. Monday through Friday are only allowed if expressly allowed by a Development Permit or other planning approval. This permit authorizes such construction hours.

5. **Planned Development Permit Amendment Findings.** Section 20.100.940 of the San José Municipal Code establishes the required findings for issuance of a Planned Development Permit.

- a. The Planned Development Permit Amendment, as approved, furthers the policies of the General Plan land use of Neighborhood/Community Commercial in that the proposed project will enhance the existing commercial uses on-site. The proposed project is consistent with and will further these policy of the General Plan.

Analysis: The subject site is located in the General Plan land use designation of Neighborhood/Commercial. However, the project was previously approved under the 2020 General Plan. The project was approved using the Discretionary Alternate Use Policy entitled Two-Acre Rule, which allowed parcels in a non-residential land use designation to be developed under any residential or non-residential category if it met the requirements. The project met the requirements of the policy.

- b. The Planned Development Permit conforms to the planned development zoning of the property. As described above, the proposed project is consistent with the development standards of the Planned Development Zoning District File Number PDC07-083.

Analysis: The project was previously approved under a Planned Development Permit (File No. PD07-089). The project is currently under construction. This permit would allow for construction hours on Saturday's to allow for weekend construction of a previously approved permit.

- c. The Planned Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.

Analysis: The project was noticed for a 500-foot radius per the City Council Policy 6-30: Public Outreach Policy.

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious.

Analysis: The project does not include any modifications to the overall scope and design of the previously approved permit.

- e. Amendments may be granted at the discretion of the director, planning commission on appeal, or city council as appropriate upon a finding that the amendment does not negate any findings required by [Section 20.100.940](#).

Analysis: The extended construction hours would facilitate the construction of a previously approved permit (File No. PD07-089). This project would not negate the findings of the Planned Development Permit.

- 6. Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

An addendum to the Mitigated Negative Declaration for Leigh Avenue Apartments Project was prepared under the provisions of the environmental review requirements the California Environmental Quality Act of 1970, as amended (CEQA), including the state and local implementing regulations. The CEQA Guidelines Section 15164 states that “A lead agency or responsible agency shall prepare an addendum to a previously certified EIR or negative declaration if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR or negative declaration have occurred.” Circumstances which would warrant a subsequent EIR or negative declaration include substantial changes in the project or new information of substantial importance which would require major revisions of the previous EIR or negative declaration due to the occurrence of new significant impacts and/or a substantial increase in the severity of previously identified significant effects.

The Addendum provided a Construction Noise conditions of approval to address the proposed extension of the construction hours to include Saturdays between 8:00 a.m. and 3:30 p.m. and to minimize the risk of disturbance to neighboring residential uses. The addendum concluded that the proposed changes in the construction hours would not result in a new significant impact nor an increase in the severity of any previously identified impact in the adopted Mitigated Negative Declaration. Therefore, an Addendum to the adopted Mitigated Negative Declaration is appropriate.

In accordance with the findings set forth above, a Planned Development Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and

- b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire four (4) years from and after the date of issuance hereof by said Director, if within such four (4) year time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Conformance to Previous Plans.** The development of the site shall still conform to the approved Planned Development Permit plans entitled, "Leigh Avenue Senior Apartments" dated July 2, 2019 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
4. **Conformance with Approved Zoning and Planned Development Permit.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning (File No. PDC07-83) and Planned Development Permit (PD07-089) remain in effect except for the condition for construction hours which is being changed with this permit.
5. **Construction Hours.** Construction hours are allowed Monday through Friday 7:00 am to 7:00 pm; and Saturdays 8:00 a.m. to 3:30 p.m.
6. **Environmental Conditions.** All environmental conditions included in the prior permit for File Nos. PDC07-083 and PD07-089 still apply.
7. **Public Works.** All Public Works conditions included in the prior permit for File Nos. PDC07-083 and PD07-089 remain applicable.
8. **Construction Noise.**
 - a. On Saturday, construction will occur between the hours of 8:00 a.m. to 3:30 p.m. to minimize early construction noise.
 - b. Construction will occur sporadically on Saturdays only as needed to maintain construction schedule.
 - c. Saturday work will attempt to minimize all noise by only using the forklift occasionally to move materials. Forklift use will be minimized by stockpiling materials in the appropriate place on Friday.
 - d. No framing is expected to occur on Saturdays. Saturdays may be used to complete interior finish work. If there are windows and doors installed, they will be closed to minimize power tool noise. Examples of Saturday construction work include:
 - i. Drywall
 - ii. Finish carpentry

- iii. Painting
 - iv. Landscaping
 - e. The superintendent will be responsible for responding to any local complaints about construction noise. The Superintendent will determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and will require that reasonable measures warranted to correct the problem be implemented. Telephone number for the Superintendent will be conspicuously posted at the construction site and include. Posting will include the notice sent to the adjacent neighbors regarding the construction schedule.
 - f. No music will be permitted on Saturdays.
 - g. Construction crew will cut materials near Leigh Avenue and Southwest Expressway, far away from the apartments.
 - h. To help minimize all noise, the construction crew will limit the use of power tools near the apartments.
 - i. Construction will avoid delivery on Saturday, to the extent possible. If there is a need to have deliveries on Saturday, it will occur during late morning hours after 9:00 a.m.
 - j. No concrete will be poured on Saturdays.
9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
10. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
11. **Revocation.** This Permit is subject to revocation for violation of any of its provisions or conditions.
12. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
13. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or

- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **6th day of May, 2020.**

Rosalyn Hughey, Director
Planning, Building, and Code Enforcement

Deputy

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